IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 3943 of 2007(T)

PETITIONER:

M.K. BASHEER, S/O. KUNJALI,
VI/120, PALAKKADKUZHIYIL HOUSE, VAZHAYUR EAST P.O.
MALAPPURAM DISTRICT, PIN-677633.

BY ADV. SRI.G.HARIHARAN
SRI.PRAVEEN.H.

RESPONDENTS:

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1. VAZHAYUR GRAMA PANCHAYATH,
VAZHAYUR, MALAPPURAM DISTRICT, REPRESENTED BY ITS SECRETARY.

2. DISTRICT COLLECTOR, MALAPPURAM.

BY ADV. SRI.V.RAJENDRAN
GOVERNMENT PLEADER SRI.K.J.MOHAMMED ANZAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

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W.P.(C).No. 3943 OF 2007

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Dated this the 24th day of July, 2007

JUDGMENT

The Chaliyar river is passing through Vazhayur Grama Panchayat. Petitioner has approached this court seeking a mandamus to prevent the unauthorised extraction of river sand from Chungappally kadavu of Chaliyar river within the jurisdiction of Vazhayur Grama Panchayat. Petitioner also seeks a direction commanding the second respondent to monitor the functions of kadavu committees formed under the provisions of Protection of River Banks and Regulation of Removal and Sand Act and Rules 2002 in the various kadavus of Chaliyar River within the jurisdiction of Vazhayur Grama Panchayat. Petitioner relies on Ext.P1 which is stated to be an approved sketch issued by the Vazhayur Grama Panchayat identifying various poozhikkadavu in the banks of Chaliyar river. Chungappally kadavu is shown as item No.8 in Ext.P1 plan. Petitioner is having a case that sand is being extracted using heavy net. Exts.P2 and P3 photographs

are produced. It is his case that there is unabated extraction of river sand by the members of various unions who are engaged in extraction of river sand in the Chungappally kadavu.

2. Counter affidavit is filed by the first respondent. Therein it is interalia stated that Ext.P1 is not an approved sketch and it is only a proposal for the next year submitted by the Panchayat to the District Expert Committee. It is stated that there is no sand mining at all in Chungappally kadavu as the same has not been proposed by the District Committee. There were no complaints from any quarters that there was any unauthorised mining from Chungappally kadavu, it is stated. It is also stated that the writ petition is filed with ulterior motives. The same petitioner has filed another writ petition against Vazhakkad Grama Panchayat seeking to prevent removal of sand, it is stated. It is stated that petitioner's father has applied for Patta in his land in R.S.No.B6-82/1 of Vazhayoor Village just 1 K.m. away from the Chungappally kadavu. It is stated that it is only to attract more business to said pattahar that the petitioner is complaining about the erosion of river banks and ecological imbalances in the nearby kadavus.

3. Petitioner has filed a reply affidavit also producing Ext.P8. Second respondent has filed a counter affidavit. Therein it is interalia stated that the number of kadavus in Vazhayur Grama Panchayat from which sand removal operation are permitted by the District Expert Committee is 8 and a kadavu namely Chungappally kadavu is not included in the above 8 authorised kadavus. It is stated that Ext.P1 is a copy of the proposal submitted by the Panchayat authorities for approval and no discussion has been taken on the proposal by the District Expert Committee. There were no complaints from any quarters that unauthorised sand mining has been taking place in a kadavu named Chungapalli, it is his further case.

4. I heard learned counsel for the petitioner, learned counsel for the Panchayat besides the learned Government Pleader.

5. Admittedly Ext.P1 appears to be a proposal of the Panchayat by including Chungappally kadavu also. But as pointed out by the District Collector, Chungapappally kadavu is not an authorised kadavu. But it is also not disputed by the counsel for the Panchayat that there is a kadavu called

Chungappally Kadavu which is not notified. As there is a kadavu as Chungappally which is of course not notified , extraction of river sand cannot be done from the Chungappallay kadavu. In such circumstances, the writ petition is disposed of as follows:

It is for the petitioner to move the second respondent if there is extraction from the Chungappally kadavu and if any representation is filed bringing the extraction from the Chungappally kadavu which as agreed by the counsel for the respondents is not an authorised kadavu , action will be taken in accordance with law by the second respondent on the said representation to see that illegal activities therein are prevented.

(K.M.JOSEPH, JUDGE)

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